

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

In Re:)	Docket No. 2020-275-S
)	
Application of Condor Environmental,)	
Incorporated Requesting an Expansion of)	
Its Existing Sewer Service Area to Include)	
Certain Portions of Anderson County and)	
Saluda County and Approval of Agreement)	
(request for Expedited Review))	
)	

PETITION TO INTERVENE
OF AMERICAN LAND HOLDINGS, LLC, PALMETTO POINTE DEVELOPMENT
COMPANY, LLC AND PALMETTO POINTE COMMUNITY ASSOCIATION, INC.

Pursuant to Public Service Commission Regulation 103-825, and other applicable provisions of the Commission’s Rules of Practice and Procedure, American Land Holdings, LLC, (“ALH”), Palmetto Pointe Development Company, LLC (“PPDC”) and Palmetto Pointe Community Association, Inc. (“PPCA”) (collectively referred to as the “Petitioners”) hereby file this Petition to Intervene in the above-captioned proceeding. In support of this Petition, Petitioners state as follows:

1. ALH is a Virginia limited liability corporation authorized to conduct business in South Carolina. PPDC is a South Carolina limited liability corporation formed and wholly owned by ALH for the purpose of developing Palmetto Pointe. PPCA is a South Carolina non-profit corporation formed by ALH for various purposes associated with the ongoing operations of Palmetto Pointe.

2. ALH, PPDC and PPCA seek to intervene in this proceeding to support the application of Condor Environmental Incorporated (“Condor”) and to oppose the petition of the

Saluda County Water and Sewer Authority (“SCWSA”). As will be shown below, prompt approval of the Condor application is critical to the continued success of Palmetto Pointe and any delay caused by the issues raised by SCWSA will threaten the development by preventing the timely provision of wastewater collection and treatment services.

3. Palmetto Pointe is a high-end 125-acre residential development on Lake Murray off Mount Willing Road in Saluda County. PPDC began marketing Palmetto Pointe in the fall of 2019. As of the date of this filing 98 of the 99 lots in the development have been sold. 12 homes are under construction with 3 nearing completion and expected to be occupied by early 2021. In addition, 2 homes have been completed and certificates of occupancy have been issued. The average sales price of lots in Palmetto Pointe was \$148,857. Homes built in Palmetto Pointe are expected to be valued in the range of \$300,000 to \$1,000,000. When the development is fully built out it will represent a substantial increase in the assessed property values of Saluda County and will promote additional economic development and activity in a rural part of South Carolina that has experienced little development in recent years.

4. As part of the development of Palmetto Pointe, ALH approached SCWSA about obtaining water and sewer service for the project. On January 3, 2019 SCWSA offered a proposal for water and sewer service to Palmetto Pointe that would have required the payment of capacity fees for water service at a rate of \$1650 for each lot and sewer capacity fees at \$3500 for each lot. Because SCWSA did not have sewer collection and treatment facilities in place to serve Palmetto Pointe nor any plans to build such facilities, ALH requested a revised proposal that only included water service. On February 25, 2019 SCWSA provided a water-only proposal. ALH accepted the February 25, 2019 proposal and SCWSA is now the water provider for Palmetto Pointe.

5. Because of the unavailability of wastewater collection and treatment service from SCWSA, PPDC made arrangements for the development of septic service for the lots in Palmetto Pointe. Substantial engineering work was done to determine what lots were appropriate for service by individual septic systems and which would be served by a “community or cluster collection and treatment system” as defined in Regulation 61-56, part 102.5 of the regulations of the South Carolina Department of Health and Environmental Control (“DHEC”). Based on the engineering work done for ALH and PPDC, Wastewater Construction Permit Number WW042393 (“the Permit”) was sought and received by ALH on April 23, 2020 from DHEC’s Bureau of Water. See Exhibit A. The Permit approved the construction of a system (“the System”) to serve 45 lots that included individual septic tanks for each lot, pump tanks, 7,340 feet of PVC force mains and 3 separate common drain fields with a total of 14,500 feet of disposal lines.

6. Under Regulation 61-56 part 300.1, DHEC will not issue a construction permit for an onsite wastewater system where a wastewater treatment system is accessible for connection. The issuance of the Permit reflects the determination by DHEC that SCWSA does not have facilities in place to serve Palmetto Pointe. If SCWSA did have such facilities in place DHEC would have refused to issue the Permit and would have required interconnection to the SCWSA system.

7. Because SCWSA did not have the capability to serve Palmetto Pointe, PPDC was required to spend substantial sums on engineering, construction and permitting activities to support the provision of wastewater treatment services to Palmetto Pointe. A partial list of these estimated expenses for PPDC or individual lot owners includes: approximately \$175,000 for soils testing, engineering and design; \$231,527 for construction of the common elements of the System; approximately \$450,000 for lot owner construction costs for lots served by the System;

approximately \$432,000 for septic costs for the lots served by individual septic systems. The unavailability of a wastewater connection also required that approximately 10 acres of the development be set aside for drain fields. The loss of that portion of the property for the development of lots is estimated to have deprived PPDC of the potential of approximately \$1,000,000 in additional lots sales. In addition, PPDC abandoned approximately 15 acres due to poor soils and lack of land required to provide wastewater treatment service to these lots. The loss of that portion of the property for the development of lots is estimated to have deprived PPDC of the potential of approximately \$1,500,000 in additional lot sales.

8. In addition to the costs and loss of potential revenues caused by the need to develop septic service for Palmetto Pointe, DHEC required that Petitioners enter into a Financial Assurances and Emergency Response Agreement to imposing operating requirements for the System and establishing the amount to be escrowed as financial assurance (“Financial Assurance Escrow”) for the proper operation of the System. That agreement, entered in March 2020, and amended twice since, will require Petitioners to pay to DHEC \$231,527 to be held by DHEC for as long as Petitioners operate the System permitted by the Permit.

9. Under DHEC regulations, a Financial Assurances Escrow is not required if the System is owned and operated by a utility regulated by this Commission. For this reason and to provide competent and professional services to their customers, Petitioners negotiated a contract with Condor by which Condor would take ownership and responsibility for the Palmetto Pointe System. That contract has been submitted as an exhibit by Condor to its application for approval of its provision of wastewater treatment services to Palmetto Pointe. The fact that DHEC does not require a substantial Financial Assurances Escrow if the System is owned and operated by a regulated utility reflects the policy preference for ownership and operation of such facilities by

regulated companies in the business of providing such services. By a filing made in this docket dated November 23, 2020, DHEC has endorsed the “technical, managerial and financial capacity [of Condor] to operate a viable wastewater system” and vouched for Condor’s “history of environmental compliance.” See Docket Entry 295711. Based on their interactions with DHEC, Petitioners are informed and believe that DHEC will approve a transfer of the Permit to Condor once the System is transferred and this Commission approves Condor’s request to serve Palmetto Pointe. Under those circumstances, the operating permit for the System will be issued to Condor.

10. The System to serve Palmetto Pointe is currently under construction and is expected to be completed by January 1, 2021. It is critical to the continued successful development of Palmetto Pointe that wastewater treatment service be available by February 1, 2021 when houses are expected to be completed that will be connected to the System.¹ In order for the System to be operational by that date Petitioners request that Condor’s application be granted on an expedited basis as sought by Condor.

11. SCWSA’s petition to intervene should be denied. SCWSA has cited no authority for the proposition that it has the exclusive right to own and operate a community or cluster septic system of the kind authorized in the Permit issued by DHEC pursuant to Regulation 61-56 part 300.1. Act 1015 of 1970 created SCWSA and authorized it to provide water service throughout unincorporated parts of Saluda County. In 1992 the General Assembly passed Act 429 which provided that any public service district that had previously been authorized to provide water service was also authorized to provide sewer service in the same areas. See S.C. Code Ann. §6-11-320. Neither act imposes an obligation on SCWSA to extend service throughout the county and

¹ The two houses for which certificates of occupancy have been issued are both served by individual septic systems.

neither act gives SCSWA any exclusive right to own and operate onsite community or cluster systems as contemplated by Regulation 61-56, part 102.5.

12. SCWSA cited two orders of this Commission in support of its position. Neither order provides any basis for its unprecedented claim that SCWSA and SCWSA alone can own and operate an onsite community or cluster system of the kind authorized under Regulation 61-56, part 102.5. Order No. 2003-229, issued in Docket No. 2003-50-S, was an uncontested case in which United Utilities was authorized to extend service to an area not currently provided with sewer service by any other entity. Order No. 2007-628, issued in Docket No. 2006-163-S, was another uncontested matter in which Midlands Utility was authorized to extend service to the Parkstone subdivision which was not served by another provider. Neither case presented an effort by a public service district like SCWSA to block an agreement between a residential developer and a regulated utility to allow the regulated utility to own and operate a system authorized by DHEC pursuant to Regulation 61-56, part 102.5.

13. SCWSA does have certain exclusive rights to provide sewer service. Under Section 208 of the Federal Clean Water Act, DHEC oversees wastewater planning for 22 counties in South Carolina, including Saluda County. Under that Section 208 Plan, DHEC conducts conformance reviews for wastewater projects in Saluda County. As referenced above, as part of its Section 208 conformance review DHEC will not issue a construction or operating permit for an onsite wastewater treatment system “where a wastewater treatment facility is accessible for connection.” See Regulation 61-56, part 300.1. Once DHEC made the determination that SCWSA had no treatment facilities that were accessible, Petitioners were free to apply for an onsite treatment system and operate it or to contract with Condor to own and operate it. DHEC has issued the Permit and has submitted to this Commission its endorsement of Condor as a qualified operator with “a

history of environmental compliance.” Under the circumstances presented here the Commission should accept DHEC’s determinations and reject the effort by SCWSA to interfere with the timely provision of wastewater treatment services to Palmetto Pointe.

WHEREFORE, Petitioners request that the Commission grant the following relief: (1) grant the Petitioners’ request to intervene in this proceeding; (2) deny SCWSA’s petition to intervene; (3) grant the relief requested in Condor’s application and motion.

/s/ Frank R. Ellerbe, III

Frank R. Ellerbe, III

ROBINSON GRAY STEPP & LAFFITTE, LLC

Post Office Box 11449

Columbia, SC 29211

(803) 227-1112

fellerbe@robinsongray.com

Attorneys for American Land Holdings, LLC,
Palmetto Pointe Development Company, LLC and
Palmetto Pointe Community Association, Inc.



Wastewater Construction Permit

Bureau of Water

PROJECT NAME: Palmetto Pointe Subdivision – 45 Lot Common Septic System	COUNTY: Saluda
LOCATION: Saluda County - Prosperity Hwy - Right on Mt. Willing Road to subdivision on Right just before the bridge, Leesville, SC 29070	

PERMISSION IS HEREBY GRANTED TO: **American Land Holdings, LLC**
181 Clubhouse Way
Zion Crossroads, VA 22942

For the construction of a new community wastewater system in accordance with the construction plans, specifications, design calculations and the Construction Permit Application signed by William Dennis, Registered Professional Engineer, S.C Registration Number: 11116.

PROJECT DESCRIPTION:

45 individual lot septic tanks and pump tanks with 3-2 inch PVC forcemains with a total of 7,340 feet pumping to 3 common drain field areas in 3 different common areas with a total of 14,500 feet of disposal lines.

TREATMENT FACILITY:

The wastewater will be discharged to the community wastewater system at a design flow rate of 16,320 gallons per day (GPD).

STANDARD CONDITION:

In accepting this permit, the owner agrees to the admission of properly authorized persons at all reasonable hours for the purpose of sampling and inspection. This is a permit for construction only and does not constitute DHEC approval, temporary or otherwise, to place the system in operation. An Approval to Place in Operation is required and can be obtained following the completion of construction by contacting the Midlands EA Aiken at (803) 642-1637. Additional permits may be required prior to construction (e.g., Stormwater).

SPECIAL CONDITIONS:

See Page 2

PERMIT NUMBER:	WW042393
ISSUANCE DATE:	April 23, 2020
EXPIRATION DATE:	Construction must be completed and the Approval to Place in Operation granted prior to April 23, 2023 or this permit will expire.

Shawn M. Clarke, P.E., Director
 Water Facilities Permitting Division

AJE

9/21/2020 – Revised to reflect a change in the development from 48 total lots to 45 total lots.

1. This project is known as the Palmetto Pointe Subdivision and is located in Saluda County. All the conditions outlined in the "Palmetto Pointe Community Association, Inc. Financial Assurances and Emergency Response Agreement" are incorporated into this permit by reference and shall be complied with for the life of the project. A maximum of forty-five (45) lots are permitted and the total number of bedrooms is limited to one hundred thirty-six (136). No additional units may be connected to this system.
2. The Owner shall limit the development of the forty-five (45) homes attached to the community systems to the one hundred thirty-six (136) bedrooms on the following lots:
 - a. Lots 1 – 14, 19, 103 – 106 (Community System D); Total = 19
 - b. Lots 25, 26, 28, 30, 31, 32, 40, 83, 84, 90, 92 (Community System C); Total = 11
 - c. Lots 41, 51 – 55, 61, 62, 63, 68, 70 – 74 (Community System A); Total = 15
 - d. Community System B has been deleted from development plans.
 - e. All homes attached to the community wastewater systems are limited to three (3) bedrooms, except for the home developed on Lot 26, which is limited to four (4) bedrooms.
3. Prior to occupancy of the project, the Owner will provide the Financial Assurance as described in the "Palmetto Pointe Community Association, Inc. Financial Assurances and Emergency Response Agreement."
4. The Owner will provide the Department annually or upon written request a summary of the number of units connected to the Onsite Wastewater System, and verification of the contractor responsible for the operation and maintenance of the system.
5. To verify that all units have been pumped at least once in 5 years, the Owner will provide the Department a report on the septage pumping of each unit beginning 5 years from the issuance of the permit and continuing every 5 years thereafter.
6. Under the provisions of Regulation 61-9, which apply to this project, the Owner, contractor, or its assigns, shall report any non-compliance with provisions specified in this permit, which may endanger public health or the environment. The Owner or contractor shall notify the Department orally within 24 hours of becoming aware of such conditions. During normal working hours, the Midlands BEHS Aiken office should be notified at (803) 642-1637. After-hour reporting should be made to the 24-Hour Emergency Response telephone number at 1-888-481-0125. The Owner or contractor shall provide the following information to the Department in writing within five (5) days of becoming aware of such conditions:
 - a. A description of the discharge and cause of non-compliance; and
 - b. The period on non-compliance, including exact dates and times; or, if not corrected, the anticipated time the non-compliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the non-compliance. The Owner shall at all times properly operate and maintain all

facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Owner to achieve compliance with the conditions of this permit.

7. Failure to abide by the Financial Assurances and Emergency Response Agreement may result in the revocation of the SCDHEC permits to operate, or approvals to place in operation, requiring the system to be taken out of operation. Any occupancy of a unit after the system has been taken out of operation will be considered a violation of Regulation 61-56. The Department may take action to have utilities to the units terminated.
8. Nothing in the Financial Assurances and Emergency Response Agreement shall be construed to limit any authority of SCDHEC to issue any orders to take any other actions, which it deems necessary to protect the environment or the public health and safety, or to compel compliance with the environmental laws of this State. Failure of the Owner to comply with the Financial Assurances and Emergency Response Agreement shall be subject to enforcement actions in accordance with the Department's authority under the Pollution Control Act, S.C. Code Ann. §§48-1-10 through 350, including but not limited to the assessment of civil penalties.